

34-20-10 Unfair labor practices -- Powers of board to prevent -- Procedure.

- (1)
 - (a) The board may prevent any person from engaging in any unfair labor practice, as listed in Section 34-20-8, affecting intrastate commerce or the orderly operation of industry.
 - (b) This authority is exclusive and is not affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.
- (2) The board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.
- (3) When it is charged that any person has engaged in or is engaged in any unfair labor practice, the board, or any agent or agency designated by the board, may issue and serve a notice of agency action on that person.
- (4)
 - (a) If, upon all the testimony taken, the board finds that any person named in the complaint has engaged in or is engaging in an unfair labor practice, the board shall state its findings of fact and shall issue and serve on the person an order to cease and desist from the unfair labor practice and to take other affirmative action designated by the commission, including reinstatement of employees with or without back pay, to effectuate the policies of this chapter.
 - (b) The order may require the person to make periodic reports showing the extent to which it has complied with the order.
 - (c) If, upon all the testimony taken, the board determines that no person named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint.
- (5)
 - (a) The board may petition the district court to enforce the order and for appropriate temporary relief or for a restraining order.
 - (b) The board shall certify and file in the court:
 - (i) a transcript of the entire record in the proceeding;
 - (ii) the pleadings and testimony upon which the order was entered; and
 - (iii) the findings and order of the board.
 - (c) When the petition is filed, the board shall serve notice on all parties to the action.
 - (d) Upon filing of the petition, the court has jurisdiction of the proceeding and of the question to be determined.
 - (e) The court may grant temporary relief or a restraining order, and, based upon the pleadings, testimony, and proceedings set forth in the transcript, order that the board's order be enforced, modified, or set aside in whole or in part.
 - (f) The court may not consider any objection that was not presented before the board, its member, agent, or agency, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances.
 - (g) The board's findings of fact, if supported by evidence, are conclusive.
 - (h)
 - (i) If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the board, its member, agent, or agency, the court may order additional evidence to be taken before the board, its member, agent, or agency, and to be made part of the transcript.
 - (ii) The board may modify its findings as to the facts, or make new findings, because of the additional evidence taken and filed.

- (iii) The board shall file the modified or new findings, which, if supported by evidence, are conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

Amended by Chapter 382, 2008 General Session